

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deckers (6,372,234).

Deckers discloses topical applications of oil bodies. The oil bodies are made from edible oils, like rapeseed oil (see example 1). Then the oil bodies are formulated into skin care products (see examples 10-13). The use of vitamin C and vitamin E mimetics and alpha lipoic are contemplated as anti-oxidants at the top of column 23. The claims appear to differ from Deckers in the inclusion of tocopherol but vitamin E mimetics would be expected to include tocopherols. Ascorbic acid is well known to be a Vitamin C source. It is appreciated that the particular amount of tocopherol and lipoic acid is not mentioned but one of ordinary skill in the art would be able to determine the extent of anti-oxidant for use in Deckers according to the extent of stability desired in the final product. It is appreciated that lecithin and enzyme are not specifically mentioned but the oil bodies of

Deckers might be expected to retain a natural source of lecithin and enzyme.

Claims 27-35 provides for the use of an oil product, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 27-35 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forest (2005/0025812).

Forest discloses a salad dressing for weight loss. Vitamins C and E are included in the composition in paragraph 0076. 25-2000 mg alpha lipoic acid is included as a nutrient supplement (Page 2, column 1, 10 lines from the bottom). Lecithin is contemplated as an ingredient in Table VI and

lecithin is a well known emulsifier for salad dressings. The claims appear to differ from Forest in the recitation of the use of rapeseed oil as a vegetable oil. It would have been obvious to one of ordinary skill in the art to utilize rapeseed oil as an oil source in Forest according to the availability of oils.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scavone (5,479,598) as further evidenced by Francis and in view of Drinda.

Scavone discloses shortening made from vegetable oils. At column 2, lines 34-35 the use of rapeseed hardstock in shortening is disclosed. In examples 1 and 3 canola oil is used in the formulation. In example 6 tocopherol and ascorbic acid are both disclosed as antioxidants for use in the shortening. Emulsifiers are used at the bottom of column 6. Although not expressly stated, canola oil is well known in the art to be rapeseed oil and Francis is relied upon for support of this assertion. The claims appear to differ from Scavone in the recitation of the inclusion of lipoic acid in the composition. Drinda teaches that lipoic acid is known in the art to be an antioxidant in vegetable oils and lard. It would have been obvious to one of ordinary skill in the art to utilize the lipoic acid of Drinda in the shortening of

Scavone as an obvious antioxidant for foods. It is appreciated that the particular amount of tocopherol and lipoic acid is not mentioned but one of ordinary skill in the art would be able to determine the extent of anti-oxidant for use in Scavone according to the extent of stability desired in the final product. The use of lecithin would have been an obvious alternative to the emulsifier used in Scavone.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794